



December 6, 1999

Ms. Simone Scott Walker
Assistant County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-3502

Dear Ms. Walker:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130225.

The Harris County Medical Examiner's Office (the "county") received a request for "all files, records, and any other documents" pertaining to the death of a named individual. You have provided for our review information that is responsive to the request. You indicate you have released all of the responsive information, other than autopsy photographs.¹ You assert the photographs are excepted from public disclosure by section 11 of article 49.25 of the Code of Criminal Procedure. We have reviewed the information you have submitted and considered the exception you assert.

Section 11 of article 49.25 of the Code of Criminal Procedure requires that autopsy records be made available to the public. Open Records Decision No. 529 (1989). Section 11 has been amended to provide that:

[t]he records [of an autopsy] are subject to required public disclosure in accordance with Chapter 552, Government Code, except that a photograph or x-ray of a body taken during an autopsy is excepted from

¹You state that you have withheld the autopsy photographs pending an opinion from this office. You also list all of the specific documents you have released to the requestor, which list includes all documents submitted for our review, except the autopsy photographs *and* a document you call a "miscellaneous sheet of paper containing case information." Because you ask for our opinion regarding only the autopsy photographs, because you raise no exception to the release of the miscellaneous sheet, and because you do not indicate you have withheld that sheet, we assume that document was released.

required public disclosure in accordance with Chapter 552, Government Code, but is subject to disclosure:

- (1) under a subpoena or authority of other law; or
- (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

Act of May 22, 1999, 76th Leg., R.S., ch 607, § 2, 1999 Tex. Sess. Law Serv. 3147, 3148 (Vernon) (to be codified as an amendment to Crim. Proc. Code art. 49.25, § 11). This amendment took effect on September 1, 1999. *Id.* § 3. You advise us the requestor has not sought the photographs “pursuant to a subpoena or under authority of other law,” and you state the photographs are not “of a body of a person who died while in the custody of law enforcement.” We thus agree the photographs must be withheld pursuant to section 11 of article 49.25 of the Code of Criminal Procedure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

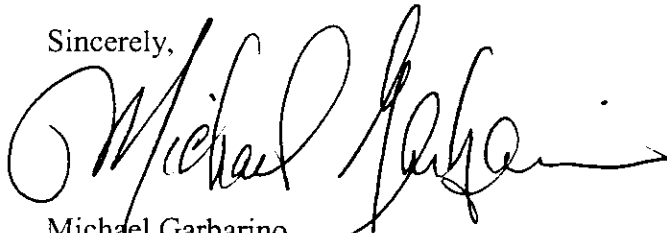
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 130225

Encl. Submitted documents

cc: Mr. John E. Wright
1214 Sam Houston Avenue, Suite 5
Huntsville, Texas 77342-6547
(w/o enclosures)